



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/795,843

03/08/2004

Dilip K. Nakhasi

0803-0111

1274

26568

7590

07/22/2011

COOK ALEX LTD

SUITE 2850

200 WEST ADAMS STREET

CHICAGO, IL 60606

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1781

MAIL DATE

DELIVERY MODE

07/22/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/795,843	<b>Applicant(s)</b> NAKHASI ET AL.	
	<b>Examiner</b> CAROLYN PADEN	<b>Art Unit</b> 1781	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,8,9,11-13,15-17,22,23,37,40,41,43,44 and 46-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,8,9,11-13,15-17,22,23,37,40,41,43,44 and 46-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5-3-11</u> .  | 6) <input type="checkbox"/> Other: _____                          |

Applicants' amendments to the claims are sufficient to overcome the rejection under 35 USC 112.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-9, 11-13, 15-17, 22-23, 37, 40-41, 43-44 and 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoyama (6,827,963) in view of Wester (6,589,688), CFR and St-Onge taken together as further evidenced by Bailey's and further in view of Pelloso (5,434,278).

Applicant has amended the claim to utilize two different medium chain triglycerides as a part of the reactant charge. This amendment has been considered but does not overcome the rejection. Aoyama contemplates saturated medium chain fatty acids having 8 to 10 carbon atoms (caprylic and capric respectively). There is no requirement that these fatty acids must be utilized separately. Further Pelloso shows that it is known in the art to combine different medium chain triglycerides together for random interesterification (example 5 on column 10). It would have

been obvious to one of ordinary skill in the art to use more than one source of medium chain fatty acid in the preparation of the triglyceride of Aoyama to create a variety of triglyceride fats.

Applicant argues that his fat has more possible triglycerides in it than Aoyama. This has been considered but does not overcome the rejection. The formula in Aoyama provides for more than one possible fatty acid to be assigned to M (medium chain) and L (long chain). One of ordinary skill in the art would expect more triglyceride variations to result from the use of the interesterification more than one or two fatty acids.

Applicant argues that Aoyama does not teach randomization products because he utilizes directed esterification with enzymes. Applicant argues that the mere mentioning of chemical synthesis would not provide for enablement of randomization in Aoyama. This has been considered but does not overcome the rejection. Pelloso, in addition to Aoyama is relied upon to show random interesterification of fatty acids by chemical synthesis. Applicant argues that Aoyama teaches away from using random interesterification because he provides a triglyceride that makes a reaction at the first and third portions of the triglyceride. This is disagreed with. Aoyama provides a triglyceride for reducing lipids in blood. At column 8,

lines 19-23, Aoyama contemplates the use of chemical synthesis as a way to prepare a triglyceride for reducing lipids in blood.

Applicant argues that St Onge does not show random interesterification as a means of enhancing phytosterol delivery. St Onge is relied upon to show that phytosterols and medium chain triglycerides are known in the art to improve plasma lipid profiles in man. Further the claims are not directed to showing that random interesterification is a means of enhancing phytosterol delivery. Applicant argues that Wester does not teach random interesterification or liquid lipid components. Wester and CFR are relied upon to show that it is known in the art to include phytosterols in cooking oils. Baileys is relied upon to provide evidenced of the smoke point of vegetable oil.

Applicant argues that Pelloso does not show a product with phytosterol. Pelloso is relied on to show random interesterification of fats and to further support Aoyama's reference to chemical synthesis of fats. The claims are directed, in part, to a fat product that has been subjected to randomization, which is known in the art in view of Aoyama in view of Pelloso.

Applicants' arguments concerning the claim 40 have been considered but do not overcome the rejection. Claim 40 is directed to a method wherein the LDL cholesterol is reduced. The fact that applicant may or may not have shown a lower LDL cholesterol than St Onge does not alter the fact that the LDL cholesterol in St Onge was reduced. Applicants' arguments are not commensurate in scope with the claims. Applicants' reference to a 2006 clinical study does not appear to have been included in the present application.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached by dialing 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/795,843  
Art Unit: 1781

Page 7

/Carolyn Paden/

Primary Examiner 1781